

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3
4 Diamandia Lingos,

5 Plaintiff

6 v.

7 U Gym LLC, et al.,

8 Defendants
9

Case No. 2:16-cv-01684-JAD-GWF

**Order Dismissing and
Closing Case**

10 On 5/8/17, after the parties notified the court that this action had been settled and that the
11 final settlement payment was due 7/15/17,¹ the court ordered the parties to file their stipulation
12 and proposed order to dismiss with prejudice and close this case by 8/4/17.² Nothing was filed.
13 On 5/1/19, the court ordered the parties to file a stipulation and proposed order dismissing and
14 closing this case, or this court will deem this case abandoned and direct the clerk of court to
15 dismiss and close it.³ Still, nothing was filed. I construe this silence as the plaintiff's intent to
16 abandon this case, and I dismiss it.

17 District courts have the inherent power to control their dockets and "[i]n the exercise of
18 that power, they may impose sanctions including, where appropriate . . . dismissal" of a case.⁴ A
19 court may dismiss an action based on a party's failure to prosecute an action, failure to obey a
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21 ¹ ECF No. 18.

22 ² ECF No. 20.

23 ³ ECF No. 21.

⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

1 court order, or failure to comply with local rules.⁵ In determining whether to dismiss an action
2 on one of these grounds, the court must consider: (1) the public’s interest in expeditious
3 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
4 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
5 availability of less drastic alternatives.⁶

6 The first two factors, the public’s interest in expeditiously resolving this litigation and the
7 court’s interest in managing its docket, weigh in favor of dismissal. The third factor, risk of
8 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
9 from the occurrence of unreasonable delay in filing a pleading ordered by the court or
10 prosecuting an action.⁷ A court’s warning to a party that its failure to obey the court’s order will
11 result in dismissal satisfies the fifth factor’s “consideration of alternatives” requirement.⁸ That
12 warning was given here.⁹ The fourth factor—the public policy favoring disposition of cases on
13 their merits—is greatly outweighed by the factors favoring dismissal.

17 ⁵ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
18 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
19 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
20 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
21 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
22 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

21 ⁶ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
22 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.


22 ⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23 ⁸ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

⁹ ECF No. 21.

Accordingly, IT IS HEREBY ORDERED that this action is DISMISSED without prejudice for failure to prosecute it. The Clerk of Court is directed to CLOSE THIS CASE.

Dated: May 20, 2019


U.S. District Judge Jennifer A. Dorsey